

Message

From: Jones, Enesta [Jones.Enesta@epa.gov]
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To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily News Clips, 4/27/20

Daily News Clips
April 27, 2020

Air

Bloomberg Environment: Ethanol Group Asks Trump to Aid Sector as Fuel Demand Craters

E&E: Enviro-sue EPA over Texas power plant's emissions

E&E: House Democrat pushes legislation to curb airline emissions

E&E: Critics blast 'irrational' power plant rule in court

Forbes: Over 14 Million People Of Color In The U.S. Live In Counties With High Air Pollution

Inside EPA: EPA's Potential Testing Tweak Could Be 'Backdoor' Vehicle GHG Rollback

Politifact: Is Pelosi right that EPA said its new rule on air pollutants would harm public health?

The Hill: More than 70 lawmakers join suit challenging Trump power plant rollbacks

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Chemicals

Bloomberg Environment: Dry Cleaning Solvent Carries Unreasonable Public Risk, EPA Finds

Coronavirus

Audubon Magazine: EPA's Recent Rollbacks Raise Public Health Worries for Vulnerable Americans

Axios: Oil sector is down in coronavirus crisis, but it's set to bounce back

Bloomberg Environment: Coronavirus Raises Concerns Over Response to Natural Disasters

E&E: EPA punts carbon rule due to pandemic

Energy News Network: As EPA backs off enforcement, states and cities have little capacity to fill gap

Inside EPA: EPA May Have To Delay SACC's Perc Review Due To Lack Of Advisors

Politico's Morning Energy: EPA SAYS VIRUS DELAYING CARBON RULE REVISIONS

Enforcement

E&E: EPA to let N.C. waive civil penalties for NOx violations

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Personnel

E&E: Ex-Hill staffer joins EPA as special adviser

<https://www.eenews.net/greenwire/2020/04/27/stories/1062986879>

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PFAS

E&E: Senate committee looks to revive bipartisan PFAS compromise

Water

Bloomberg Environment: Chesapeake Bay Foundation Fires Shot Against Trump Water Rule

Bloomberg Environment: Lawyers See Maui Opinion as Grounds to Challenge Trump Water Rule

Bloomberg Environment: Wichita to Get \$280 Million Loan for New Water Treatment Plant

E&E: Ranchers fire early shots in legal fight over WOTUS rewrite

E&E: Democrats promise muscular response to Trump WOTUS rule

The Hill: Supreme Court decision will still allow for water pollution, but possibly less

The Hill: Ranchers sue Trump administration, arguing water rollback is federal overreach

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Air

Bloomberg Environment

Ethanol Group Asks Trump to Aid Sector as Fuel Demand Craters

<https://news.bloombergenvironment.com/environment-and-energy/ethanol-group-asks-trump-to-aid-sector-as-fuel-demand-craters>

By Jennifer Dlouhy

Ethanol advocates beseeched President Trump for aid on Monday, warning that more than half of U.S. capacity to produce the biofuel is already offline as coronavirus-spurred social distancing efforts cause demand to crater.

- The American Coalition for Ethanol asked Trump to direct his cabinet to formulate a plan to aid the renewable fuels sector, comparing it to the president's push for oil industry spending
 - "Now is the time your leadership in support of America's farmers and the renewable fuels sector can help cut through bureaucratic red tape and respond to the mounting economic harm," ACE head Brian Jennings said in [letter](#) to Trump
- Note: Trump administration's \$19b farmer aid package did not include targeted relief for biofuel
- "A more urgent response is needed," Jennings said. "The administration has tools that can be deployed with the necessary political will

--With assistance from Michael Hirtzer.

E&E

Enviros sue EPA over Texas power plant's emissions

<https://www.eenews.net/eenewspm/2020/04/27/stories/1062988113>

By Sean Reilly

EPA faces a lawsuit for allegedly failing to tackle sulfur dioxide emissions from a large coal-fired Texas power plant.

The suit, filed today by the Sierra Club in the U.S. District Court for the District of Columbia, charges that the agency is more than a year past a statutory timetable for finding that Texas has failed to turn in a cleanup plan to address SO₂ releases from the Martin Lake plant in east Texas. The 2,250-megawatt facility is owned by Luminant Generation Co. LLC, a branch of Vistra Energy Corp.

The Sierra Club had formally threatened the suit last summer, around the same time EPA proposed to walk back its 2016 determination that the area around the plant was in nonattainment for its 2010 ambient air quality SO₂ standard of 75 parts per billion (*E&E News PM*, Aug. 22, 2019). EPA took that step in the wake of reconsideration petitions brought by the plant's owner, Luminant Generation, and the Texas Commission on Environmental Quality. Eight months later, however, the agency has not yet made a final decision.

The Martin Lake plant "is the nation's single largest source of sulfur dioxide pollution, and significantly impacts air quality throughout the region," the Sierra Club said in a news release this afternoon.

At EPA, which typically does not discuss pending litigation, a spokeswoman had no immediate comment.

E&E

House Democrat pushes legislation to curb airline emissions

<https://www.eenews.net/eedaily/stories/1062981271/search?keyword=EPA>

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By Maxine Joselow

Michigan Democratic Rep. Andy Levin introduced legislation that would require EPA to promulgate new greenhouse gas emissions standards for airplanes.

H.R. 6606 comes after Democrats failed to include emissions standards for planes and clean energy tax breaks in the \$2.2 trillion Coronavirus Aid, Relief and Economic Security Act last month.

Their push to include climate provisions ran into resistance from Republicans, with Senate Majority Leader Mitch McConnell of Kentucky accusing Democrats of trying to "dust off the Green New Deal."

The CARES Act ended up providing \$50 billion in loans to the airline industry without climate strings attached.

Meanwhile, the Trump administration's EPA faces allegations of dragging its feet on issuing the first-ever U.S. emissions standards for aircraft.

The agency said in its spring 2019 regulatory plan that it hoped to release the standards last fall (*Climatewire*, May 29, 2019).

But that deadline came and went without action, sowing concern among environmentalists (*Climatewire*, Oct. 3, 2019).

The Levin bill is unlikely to pass the GOP-controlled Senate and become law. But as a messaging tool, it signals that Democrats remain interested in cracking down on pollution from aviation, one of the fastest-growing sources of global carbon emissions.

E&E

Critics blast 'irrational' power plant rule in court

<https://www.eenews.net/climatewire/2020/04/27/stories/1062979781>

By Jennifer Hijazi

An array of officials, academics and outdoor enthusiasts last week threw their support behind legal challengers of the Trump administration's Clean Power Plan overhaul.

In a flurry of "friend of the court" briefs filed Friday, experts, lawmakers and local leaders supported a litigation led by public health groups, environmentalists and blue states, which claim that the less-stringent Affordable Clean Energy rule rolled out by the Trump EPA will set back efforts to curb greenhouse gas emissions.

Opponents of the ACE rule insist that the regulation loosens existing standards for power plant emissions without a valid or legal reason (*Climatewire*, April 20). Conservative interests and coal companies have also sued, arguing that the Trump rule goes too far.

A group of Democratic senators, including Sheldon Whitehouse of Rhode Island and Kirsten Gillibrand of New York, wrote in their brief that EPA is so "flagrantly" entangled by special interests that the agency has failed to meet its statutory obligations under the Administrative Procedure Act.

"Key figures at EPA overseeing development of the ACE Rule were long-time advocates for the industry they were entrusted to regulate," the lawmakers wrote in a Friday filing with the U.S. Court of Appeals for the District of Columbia Circuit. "They have crafted and/or lobbied for industry's policy and political priorities for decades."

The U.S. Conference of Mayors and the National League of Cities led a group of local leaders that argued that the Trump rule will set back municipalities' work to mitigate climate change impacts. The group, represented by Sabin Center for Climate Change Law executive director and attorney Michael Burger, also noted that EPA

failed to analyze how higher emissions and pollution would increase inequality for vulnerable populations likely to be near power plants.

"EPA has not acknowledged the existing disproportionate burden on environmental justice communities, let alone considered the likelihood that the ACE Rule will exacerbate the problem," the brief said.

Public health professionals warned that the ACE rule will invite a host of avoidable medical problems for Americans, particularly those in minority and low-income communities.

"Indeed, the ACE Rule's minimal reductions in carbon emissions are unlikely to prevent the mortality and morbidity that will result from temperature extremes, air pollution, pollen, floods, droughts, storms, desertification, and malnutrition," they wrote.

A group of economic and climate experts and the Union of Concerned Scientists criticized Trump's EPA for ignoring scientific consensus that the decarbonization of the power sector is crucial to fight climate change.

"In a rule designed to avert the dangers to public welfare from greenhouse gas concentrations, a failure to grapple with the centrality of the power sector to emissions reductions is irrational," the experts wrote.

Economy and morality at stake

Christian and Jewish leaders said the new rule is inconsistent with humankind's duty to protect God's creation and preserve the environment for future generations.

"As a nation that professes care and concern for the health and well-being of its environment and people, as manifested by the very existence of an Environmental Protection Agency, we are falling woefully short," the faith organizations wrote.

Recreation companies like Patagonia Works and Columbia Sportswear Co. said the ACE rule would damage outdoor industries that are integral to the national economy.

"As climate change destroys natural resources, erodes coast lines, exacerbates air pollution, and wreaks havoc on our water, [our] customers may be prevented from engaging in the many outdoor activities that they love," the companies argued.

Climate change consequences, they continued, will "reduce access to outdoor recreation opportunities, which will in turn impact demand for the goods and services the outdoor recreation industry provides."

National parks advocates told the court that dirtier power plants would take a big toll on America's "cherished public lands."

Supporters of the new ACE rule are expected to file their own "friend of the court" briefs in June.

Forbes

Over 14 Million People Of Color In The U.S. Live In Counties With High Air Pollution

<https://www.forbes.com/sites/anuradhavaranasi/2020/04/27/over-14-million-people-of-color-in-the-us-live-in-counties-with-high-air-pollution/#675143d35301>

By [Anuradha Varanasi](#)

The American Lung Association's latest report "[State of the Air](#)" has revealed startling racial disparities in terms of exposure to air pollution. Over 14 million people of color or more precisely, 14,329, 923 people of color live in counties mainly along the West Coast where they are subjected to both, short-term and year-long particle pollution and ozone pollution.

This includes Hispanics, Asians, American Indian/Alaska Natives and especially, African Americans. The American city that has the highest number of people of color (over 13 million people) being exposed to year-long particle pollution is the Los Angeles and Long Beach area in California. The reason? All thanks to traffic and commercial pollution. Long Beach also has one of the largest ports in the country where a lot of trucks are used to ship goods and additional pollution from freight trains.

To make matters worse, these areas are surrounded by mountains where air pollution blows inwards and gets trapped, turning Los Angeles and the Long Beach area into a bowl of smog.

Particle air pollution is a term used to define a mixture of tiny solid and liquid particles that remain suspended in the air. These particles can include acids like sulphuric acid, according to the Environmental Protection Agency. And dust and soil particles, chemicals or inorganic materials like ammonium sulfate, sodium chloride, and ammonium nitrate. On the other hand, ozone pollution is the result of increased heat caused by automobile exhaust, industrial emissions, and power plants. In New York and New Jersey, over 11 million people of color are at the risk of ozone pollution.

This is yet another report that highlights how the burden of air pollution is not shared evenly in the United States. Another fact from the report that might raise eyebrows is how communities of color are far more likely to be exposed to air pollution as compared to those living in poverty. The report said that more than 18.7 million people with incomes that meet the federal definition of poverty live in counties that have short-term and long-term particle pollution or ozone pollution.

But, in comparison, approximately 74 million people of color live in counties that received at least one failing grade for ozone and particle pollution. Dr. Afif El-Hasan, a pediatrician with Kaiser Permanente in Orange County, California, and a board member of the American Lung Association, says, "Areas with cleaner air tend to be more expensive to live in. Sometimes, people who have fewer resources, especially communities of color and low-income groups, also have less of an ability to litigate or to protect their rights in a specific area to make sure that they maintain clean air. So, it's easier for industries to be set-up in those areas."

"It's also unfortunately true that children who live in those areas and want to play outside are subjected to higher pollution exposure. That's even worse for children because pollution exposure to particulate pollution in children can reduce the development of the lungs," he adds.

A recent EPA review that looked into the health effects of particle pollution concluded that non-white populations –especially blacks – faced higher risk from particle pollution. A 2016 study published in the journal Epidemiology, looked at the mortality rates among Medicaid users and found that individuals who live in predominately black or African American communities suffered from a higher risk of premature death from particle pollution as compared to those who live in predominantly white or Caucasian communities.

When it comes to proving how African Americans and other communities of color are far more vulnerable to higher exposure of air pollution, a 2017 study published in The New England Journal of Medicine revealed how race tends to play a bigger role as compared to income.

The researchers found that while African Americans with incomes higher than many whites still faced “greater risk than those whites”. The study suggested that factors such as racial discrimination that causes chronic stress might be one reason for that.

Researchers have also found a greater risk for African Americans from hazardous air pollutants, especially those from traffic sources.

“Many people live near freeways in those areas. You also have more people of color and African Americans who don't have cars. So, they have to walk in the pollution to gain access to public transportation. Whereas someone who can afford a car can drive through that area and have far lower exposure to smog,” says El-Hassan.

The report suggests that racial segregation that has lasted for several decades on end also plays a role and African Americans tend to live in areas where there is a higher exposure to air pollution.

“It is possible that these groups find themselves in a situation where they cluster in an area that happens to be unhealthy. For example, in Los Angeles, we have traditional communities like those in Koreatown and Chinatown where certain ethnicities congregate. And that can certainly affect that group. But I don't know if it's been studied enough yet,” says El-Hassan.

He emphasizes that a policy change that needs to take place is in transportation. Especially, in attempting to move away from fossil fuels and making commercial transportation low emissions or zero emissions. El-Hassan says public transportation should be made more accessible to the public. One major hurdle is that many Americans need to commute over long distances just to get to their jobs.

“City planners need to work towards reducing people’s long commutes and scale-up public transportation so there aren’t so many cars congesting the highways,” he adds.

Inside EPA

EPA’s Potential Testing Tweak Could Be ‘Backdoor’ Vehicle GHG Rollback |

<https://insideepa.com/daily-news/epa%E2%80%99s-potential-testing-tweak-could-be-%E2%80%98backdoor%E2%80%99-vehicle-ghg-rollback>

EPA is weighing an industry-sought alternative on compliance testing procedures for its vehicle greenhouse gas standards that could effectively weaken the stringency of the program even beyond the agency's just-finalized rollback, a possibility that is already drawing concern from Trump administration critics.

If EPA were to finalize the alternative approach, it is a "backdoor way of weakening the [GHG] standard," a former agency official says.

The option surfaces in proposed rule signed by EPA chief Andrew Wheeler April 1 that would adjust vehicle GHG and fuel economy compliance testing to account for updated test fuels reflecting current gasolines that include ethanol.

The agency's testing proposal would generally not change the effective stringency of the separately promulgated vehicle standards.

But an alternative approach included in the proposal would decline to make the adjustment with respect to the GHG requirements, despite a prior agency report, reference in the proposed rule, showing that the new test fuels reduce carbon dioxide emissions by 1.6 percent on average.

By not accounting for the emissions improvement from the test fuels, a move by EPA to retain the test procedures could essentially negate the rollback's nominal requirement to curb GHGs by 1.5 percent annually -- largely returning the GHG program to the regulatory freeze that Trump officials first proposed to heavy criticism.

If the agency sticks with its core proposal, however, the standards' stringency would be unchanged, the former official adds, while also voicing no objection to the proposal's approach for calculating compliance with the Transportation Department's fuel economy rules.

The test procedure proposal has not yet appeared in the *Federal Register*, though once it does it will be subject to comment for 90 days.

Like the former official, David Cooke of the Union of Concerned Scientists (UCS) similarly calls the core testing proposal "the correct approach," but says the alternative would embrace an "unjustifiable request" from automakers with respect to GHG standards.

Cooke says the alternative is particularly problematic in light of the agencies' March 31 final rule rolling back GHG and fuel economy standards.

EPA did not respond by press time to a query on the criticisms.

At issue is a long-promised EPA plan to factor so-called "Tier 3" test fuels into compliance calculations for GHG and fuel efficiency standards, in the wake of a 2014 rule requiring the new test fuels as part of a broader update to light-duty vehicle criteria pollutant standards.

The test fuel changes were necessary to bring certification fuels in line with current gasolines that, among other characteristics, include ethanol. In contrast, the prior “Tier 2” test fuel does not.

EPA has already estimated that the fuel creates changes in emissions and performance -- on average lowering GHGs while also improving fuel economy -- meaning that the switch to a new test fuel would effectively modify the stringency of GHG and fuel economy limits unless additional steps are taken to “true up” testing procedures with the new test fuels.

Testing Changes

The test procedures rulemaking has been a relative sideshow compared to the high-profile rollback of the standards advanced by EPA and the National Highway Traffic Safety Administration, which significantly scaled back the Obama administration’s requirement for a nearly 5 percent yearly improvement.

Unlike that rulemaking, the test procedure proposal is coming only from EPA, which has long been responsible for overseeing fuel economy testing, including spot verification of testing carried out by manufacturers.

“EPA is now proposing adjustment factors to apply to both vehicle GHG and fuel economy test results for the GHG and [fuel economy] programs and the Fuel Economy and Environment Label,” the agency says in its upcoming proposal.

EPA cites this as the next step in fully implementing the 2014 requirement for manufacturers to perform GHG and fuel economy tests using the Tier 3 fuel beginning in model year 2020, though it proposes to delay that deadline by at least a year.

It adds that the adjustment plan responds to the results of an EPA testing program -- promised in the 2014 rule and since completed -- to inform test procedure changes.

However, the proposal also seeks comment on “whether the Agency should consider a regulatory approach where we require the use of Tier 3 gasoline certification fuel without any test procedure adjustment for CO2.”

EPA also asks whether pursuing this route would require it to complete additional analysis, “likely in the form of a Supplemental Notice of Proposed Rulemaking (SNPRM),” or whether EPA could instead finalize “a change in the gasoline certification fuel without any CO2 adjustment factor and without issuing a SNPRM.”

Consideration of the alternative option related to GHG standards -- but not fuel economy -- reflects the fact that federal fuel economy law specifically requires EPA to use “procedures that give comparable results” to 1970s-era testing protocols when making changes to testing procedures, including test fuel changes, according to EPA’s proposal.

In contrast, the Clean Air Act “allows, but does not require, similar adjustments” with respect to the GHG program, the proposal states.

The agency also cites as authority for its proposed true up of GHG compliance calculations a directive in air act section 206(d) to establish “methods and procedures” for certification and compliance testing.

‘Poor Precedents’

The alternative plan echoes [a December letter](#) from automaker trade groups to White House regulatory reviewers. “Measurement of CO2 should continue today’s approach, also used with other fuels, namely that CO2 measurements are taken at the tailpipe and are used as measured without further adjustments,” the groups write.

More broadly, the industry trade groups say they are “highly concerned about this rulemaking and the poor precedents it sets. We believe such a proposal would not fully implement statutorily required elements and would reverse established rulemaking that support increased use of biofuels.”

But failing to adjust the CO2 program could also open the agency up to charges it is selectively trying up fuel economy calculations but not GHG requirements to account for new test fuels, despite prior calls by industry and EPA for harmonization of GHG and fuel economy programs.

And UCS’ Cooke argues that not making the test procedure adjustment for EPA’s GHG program -- in addition to weakening the GHG standards -- would create a bad precedent that EPA doesn’t believe it should adjust its compliance procedures to account for fuel content.

“Under the [fuel economy] standards, Congress required EPA to update [testing procedures] to reflect the fuel used. EPA should also adjust its rules,” he argues. -- *Doug Obey* (dobey@iwpnews.com)

Politifact

Is Pelosi right that EPA said its new rule on air pollutants would harm public health?

<https://www.politifact.com/factchecks/2020/apr/23/nancy-pelosi/nancy-pelosi-right-epa-said-its-own-new-rule-air-p/>

By Miriam Valverde

IF YOUR TIME IS SHORT

- Trump’s EPA changed how it evaluates the benefits and costs of regulating air pollutants from power plants fired by coal and oil.
- An EPA science advisory board raised issues with the EPA’s approach and recommended doing a new assessment, but that recommendation wasn’t binding.
- Advisory board members are considered special government employees, but they do not speak for the EPA as a whole.

See the sources for this fact-check

House Speaker Nancy Pelosi claimed that as Americans grapple with the coronavirus pandemic, President Donald Trump’s administration has weakened public health protections.

"While tens of thousands of Americans are dying from the coronavirus pandemic, the president is yet again seeking to unleash toxic pollution and dirty air into our communities," Pelosi said April 16. "Even President

Trump's own EPA has admitted that this rule threatens to cause serious health problems including brain damage and death and to inflict billions of dollars of economic damage on our struggling economy."

Pelosi referenced an April 16 decision by the U.S. Environmental Protection Agency to change how it evaluates the benefits and costs of regulating hazardous air pollutants from power plants fired by coal and oil. The agency concluded that the economic benefits of reducing mercury emissions under an Obama-era rule do not outweigh the costs to the power plants of complying with the rules.

PolitiFact looked into Pelosi's claim that even Trump's EPA said the new rule would be bad for public health and cost billions of dollars. The facts are more nuanced than Pelosi said.

Regulation of mercury and other pollutants

The main pollutant at issue is mercury due to its impact on public health. When mercury released into the air by power plants reaches bodies of water, it is converted by micro-organisms into methylmercury, a highly toxic substance that builds up in fish.

The most common way people are exposed to mercury is by eating fish contaminated with methylmercury. Some fish have higher levels of mercury that, when consumed, can be harmful to an unborn child, a young child's developing nervous system, the elderly, people with underlying health conditions, and people who eat a lot of fish.

The EPA regulates emissions of air toxics from coal- and oil-fired power plants under the Clean Air Act. The Obama administration added Mercury and Air Toxic Standards that set federal air pollution limits for power plants, seeking to reduce emissions of mercury and other toxic air pollutants.

The Obama administration estimated that the standards would prevent, annually, up to 11,000 premature deaths, more than 100,000 asthma attacks, about 4,700 heart attacks, reduce hospital and emergency room visits, and hundreds of thousands of days missed from work due to illness.

It projected that the compliance cost to the power plant industry would be about \$9.6 billion a year, while the financial value of air quality improvements could range from \$37 billion to \$90 billion annually.

The benefits calculation under the Obama administration included "co-benefits," which occur when regulation compliance also reduces a pollutant that is not the rule's primary target. The vast majority of the financial benefits came from a reduction of particulate matter, which can lead to serious health problems. The direct quantified benefit of reducing mercury alone — the intended target — was up to \$6 million a year.

Trump administration revises benefits-cost analysis

The Trump administration reviewed analyses done by the Obama administration and decided to take "co-benefits" out of the equation. Ultimately, it said that the financial benefits of the Obama rule totaled \$4 million to \$6 million annually (when accounting for reduction of mercury alone), while the annual cost of compliance was \$7.4 billion to \$9.6 billion.

As a result, the EPA under Trump said it "determined that it is not 'appropriate and necessary' to regulate hazardous air pollutant emissions from power plants under section 112 of the Clean Air Act." The rule limiting emission of mercury and air toxics remained in place.

Did the EPA under Trump argue against the change?

The objection Pelosi is talking about stems from a report by the EPA's Science Advisory Board.

The board is an independent committee that advises the EPA administrator on the information that is used to develop the agency's rules. Board members serve as special government employees, but their views do not reflect the views of the EPA, an agency spokesperson told us.

On April 9, the board advised the EPA to do a new assessment on mercury's impact. It said that the assessment from Trump's EPA was not all-encompassing and did not take into consideration prior board recommendations. The report was logged before the agency announced the final rule.

The board said it was a departure from the norm for the EPA to "categorically" exclude co-benefits. The move went against both the EPA's guidance on economic analysis and recommendations of the U.S. Office of Management and Budget.

The EPA reviewed links between methylmercury and brain damage, but the board said the agency should do a new risk assessment that also accounted for mercury's impact on cardiovascular health.

The EPA's assessment on exposure to methylmercury excluded commercial fish — such as fish purchased at restaurants or supermarkets, even though it accounts for 90% of the fish consumed by Americans, the report said.

"For this or any future regulation, the EPA should prepare a new exposure estimate that accounts for total exposure," the report said.

Michael Honeycutt, chair of the EPA's Science Advisory Board, said the board did have concerns with how the EPA did its analysis, but it's difficult to definitively confirm whether the EPA's new rule would lead to serious health problems, death and billions of dollars of expense.

"The EPA would need to re-do a risk assessment and take into account our recommendations," said Honeycutt, who also is director of the Toxicology Division of the Texas Commission on Environmental Quality.

Other experts said Pelosi was right to infer that the EPA's change would be detrimental to public health and cost billions annually.

"The report does not use those precise words, but it is reasonable to infer that the SAB believes that the new rule is ill advised," said Patrick Parenteau, a law professor and senior counsel in the Environmental and Natural Resources Law Clinic at Vermont Law School. He said it was also reasonable to infer that the rule would increase the risk of diseases and that the total benefits of reducing pollutants would "more than offset the costs of pollution controls."

The practical effect of the new procedure is unclear, he said, because it likely will be challenged in court or a new administration may repeal it.

Our ruling

Pelosi said, "Even President Trump's own EPA has admitted that this rule (on air pollutants) threatens to cause serious health problems including brain damage and death and to inflict billions of dollars of economic damage on our struggling economy."

Trump did not overrule his own EPA, the agency rather did not adhere to recommendations from a science advisory board. The advisory board told the EPA it had concerns with how the agency did a risk assessment and said it should do a new one.

The chair of the advisory board said that in the absence of a new assessment, it was difficult to say definitively whether the rule would have the impact Pelosi said. Other experts say that while the report did not outright say what Pelosi stated, it was accurate to infer that the rule changes could pose serious health risks for Americans.

We rate Pelosi's statement Half True.

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The Hill

More than 70 lawmakers join suit challenging Trump power plant rollbacks

<https://thehill.com/policy/energy-environment/494803-more-than-70-lawmakers-join-suit-challenging-trump-power-plant>

By [Rebecca Beitsch](#)

More than 70 Democratic lawmakers from both chambers have joined a suit challenging the Trump administration for rolling back Obama-era power plant regulations.

The Affordable Clean Energy (ACE) rule finalized by the Environmental Protection Agency (EPA) in August scraps former President Obama's Clean Power Plant rule. Lawmakers in the House and Senate filed separate amicus briefs challenging the rule late Friday.

The ACE rule aims to give states more time and authority to decide how to implement the best new technology to ease net emissions from coal-fired plants. The rule does not set any standards to cap those emissions.

Critics argue ACE allows for only modest pollution controls at power plants, a feature that, if upheld, could hamstring future administrations from addressing climate-altering pollution through regulation under the Clean Air Act.

"The Clean Air Act and its amendments granted EPA authority with significant flexibility to address unforeseen air pollution challenges, including climate change," Reps. [Paul Tonko](#) (D-N.Y) and [Jared Huffman](#) (D-Calif.) wrote in a statement after filing a brief alongside 70 other lawmakers.

"We will continue to oppose this administration's willful misinterpretations of environmental laws that seek to justify rolling back critical public health protections and undermine future administrations' ability to safeguard our environment and the American people."

The Trump EPA had long argued the Clean Power Plant rule was too broad, creating an undue burden on industry.

"CPP's overreach would have driven up energy prices for consumers and businesses alike," EPA Administrator Wheeler said when the rule was first released. "We are proposing a better plan — it respects the rule of law and will enable states to build affordable, clean, reliable energy portfolios."

The agency did not immediately respond to request for comment Monday.

But a brief from senators argued the EPA has been too aligned with industry interests since the start of the Trump administration.

“The record of this case, and of other regulatory matters of which this court may take notice, indeed raise the question whether this EPA is even capable of fair decision-making in matters involving the interests of the fossil fuel industry, or whether rampant cronyism, conflicts of interest, and corruption leave EPA under present leadership unable to conform itself to the strictures of [federal administrative law],” according to the filing from Sens. Sheldon Whitehouse (D-R.I.), Edward Markey (D-Mass.), Jeff Merkley (D-Ore.), Brian Schatz (D-Hawaii), and Kirsten Gillibrand (D-N.Y.).

Chemicals

Bloomberg Environment: Dry Cleaning Solvent Carries Unreasonable Public Risk, EPA Finds

<https://news.bloombergenvironment.com/environment-and-energy/dry-cleaning-solvent-carries-unreasonable-public-risk-epa-finds>

By Pat Rizzuto

A common solvent used to dry clean, make refrigerants, and clean muck from industrial equipment appears to have the potential to harm people’s nervous systems, the EPA said on Monday.

The Environmental Protection Agency examined factory floors and factory workers making or using the solvent perchloroethylene, as well as consumers using furniture, lubricants, or other products containing it, and people who could be standing near those consumers.

About seven in 10 dry cleaning businesses use perchloroethylene, or perc, the Halogenated Solvents Industry Alliance Inc. told the EPA as it prepared its assessment.

In nearly each case, the possibility for perchloroethylene to injure those people was unreasonably high, the EPA said a draft risk analysis released for public comment. The agency said its primary concerns are perchloroethylene’s potential to increase cancer risks and harm vision, kidneys, and the nervous system.

If the agency’s initial conclusions are issued as final, the EPA would be required under the 2016 Toxic Substances Control Act amendments to restrict the chemical’s use in some way.

EPA officials would determine the specific regulation, and the ways it could affect different commercial sectors and the public. That would be part of a separate effort that would offer the public several chances to weigh in.

Common Solvent

Companies that produced or imported the solvent between 2012 and 2015 included the Axiall Corp., now part of the Westlake Chemical Corp., Allchem Industries Holding Corp.; the Olin Corp.; Solvay USA Inc.; Superior Oil

Co. Inc; and Wego Chemical Group. The yearly national production volume ranged from 324 million to 388 million pounds, the EPA said.

Far more companies use the solvent. Businesses that use perchloroethylene to make refrigerants are the primary users, while dry cleaners are the second largest users, the EPA said.

The aerospace industry uses perchloroethylene and products containing it to clean equipment. The chemical is in greases, sealants, primers, adhesives, and lubricants that the industry uses, the Aerospace Industries Association told the agency early on in the risk evaluation process.

Perchloroethylene is a hazardous air pollutant. However, the EPA didn't examine any potential risks the general population could face if it breathes the solvent in, touches it, or gets exposed to it in water or through waste. Other regulations already cover such situations, the EPA said.

Public Comment

The perchloroethylene analysis is the last draft risk evaluation the EPA has released for the first batch of 10 chemicals that the 2016 TSCA amendments required the agency to launch.

Comments on the draft conclusions will be due 60 days after the EPA formally posts them in Federal Register.

The EPA's Science Advisory Committee on Chemicals (SACC) also will critique the science the agency used to reach its preliminary conclusions in a virtual meeting scheduled for May 26-29.

The solvent, also known as 1,1,2,2-tetrachloroethylene, is identified on many business documents by its Chemical Abstracts Service, or CAS, number 127-18-4.

Coronavirus

Audubon Magazine

EPA's Recent Rollbacks Raise Public Health Worries for Vulnerable Americans

<https://www.audubon.org/news/epas-recent-rollbacks-raise-public-health-worries-vulnerable-americans>

By Andy McGlashen

Associate Editor, Audubon Magazine

It would have been a controversial move under any circumstances, but an announcement from the U.S. Environmental Protection Agency last week looked especially problematic given the context: During an outbreak of a disease that attacks people's ability to breathe and has killed more than 45,000 Americans, the agency finalized a rule that says it's no longer "appropriate and necessary" to regulate mercury and other toxic air pollution from power plants.

In a press release announcing the rule, EPA Administrator Andrew Wheeler called it "another example of the EPA, under the Trump Administration, following the law while making reasonable regulatory decisions that are fully protective of the public health and environment." But a coalition of 21 public health organizations sharply disagreed in a joint statement. "The rule EPA announced today goes against scientific evidence, and devalues

and endangers the health of babies, children, pregnant women, and many other vulnerable populations,” the groups wrote.

The move is the latest in a series of recent Trump administration actions—among close to 100 environmental regulations the administration has gutted or is working to dismantle—likely to result in dirtier air and water. The rollbacks are particularly troubling during the coronavirus crisis, critics say, because air pollution has been linked to an increased risk of dying from COVID-19. This connection makes the easing of air-quality rules a cause of urgent concern for people of color and low-income communities that have long been forced to shoulder the worst of pollution’s health consequences.

“In the midst of this pandemic, when we’re learning that black and Latino communities and individuals are dying at higher rates than their white counterparts, we can’t ignore the fact that that comes from the public health crisis that has been endured by these communities for decades and has only gotten worse under the Trump administration,” says Jessica Loya, director of policy and programs for the nonprofit group GreenLatinos. “It was blatantly clear for black and Latino communities that Trump’s policies would cost us our lives, and now it’s becoming more clear to the entire nation.”

Last week’s action doesn’t lower limits on mercury emissions, but instead alters the regulation’s mathematical foundation—a bureaucratic-seeming change that experts say could have profound consequences. The Obama administration had justified the regulation’s hefty cost by noting that it would improve public health not only by reducing exposure to toxic mercury, but also by capturing other pollution from smokestacks, preventing an estimated 11,000 premature deaths each year. But the Trump administration’s new rule says the government can’t consider those indirect benefits, an accounting approach that allows officials to say it’s not appropriate and necessary to regulate hazardous emissions.

That interpretation could leave not only the mercury standards, but also other regulations that promote public health, vulnerable to legal challenges from the fossil fuel industry, says Joseph Goffman, executive director of the Environmental and Energy Law Program at Harvard University and a former EPA official. “I think this has a little bit less to do with this particular set of emissions standards and more to do with a much bigger project the agency and the administration have, which is to essentially sabotage or manipulate cost-benefit analysis so that it always comes out to show that the costs of regulation outweigh the benefits,” he says.

The mercury announcement arrived on the heels of the EPA’s April 14 proposal to keep in place air quality standards for particulate matter such as soot, smoke, and other particles and droplets, arguing that the existing limits are strong enough and have already brought significant decreases in pollution. Industry groups welcomed the decision, including the American Petroleum Institute, the American Chemistry Council, and the National Association of Manufacturers.

However, just days before the announcement, a Harvard research team reported findings that, because particulate matter can damage human cardiovascular and respiratory systems, even a slight uptick in long-term exposure to it leads to a major increase in the death rate from COVID-19. And that study followed a draft report in September by EPA staff which concluded that existing standards may be too lax, to the point of allowing thousands of premature deaths each year, even before the coronavirus outbreak. Health groups, noting that African-Americans are exposed to more particulate pollution and face a higher risk of dying from it, said in a joint statement that EPA’s decision “violates the core purpose of these standards under the Clean Air Act: to protect public health with an adequate margin of safety.”

Two weeks before the particulate pollution announcement, the EPA and the National Highway Traffic Safety Administration finalized a rule that weakens an Obama-era policy to curb emissions from the transportation sector, the nation's biggest source of greenhouse gases. That policy required automakers to increase the fuel efficiency of their fleets by 5 percent each year through 2026, but the Trump rule ratchets down that increase to just 1.5 percent annually. The new rule, Wheeler said when it was announced, "supports our economy, and the safety of American families." Yet the nearly 2,000-page rules says it could cost the country up to \$13.1 billion while significantly raising carbon emissions and causing more premature deaths as a result of other toxic tailpipe emissions.

And preceding all of these rollbacks was EPA's announcement on March 26 that it would exercise discretion in enforcing some pollution limits in response to the coronavirus crisis. The agency argues that the flexibility is needed under these extraordinary circumstances, and says it still "expects regulated facilities to comply with regulatory requirements, where reasonably practicable, and to return to compliance as quickly as possible." But former EPA officials describe the move—which the EPA calls temporary but for which it hasn't set an end date—as an unprecedented free pass to pollute. "I have to admit, I'm very aware of the shortcomings of Trump environmental policies, but when I read this I actually gasped," says Judith Enck, who served as a regional administrator for the agency in the Obama administration.

Environmental groups have already sued the EPA over the pause in enforcement, and are certain to challenge other rollbacks in court. But without environmental cops on the beat, Loya says communities of color face an immediate threat in the meantime. "Those toxins are being released into the air today, this minute," she says. "They're being absorbed into the lungs of black and Latino communities right now as they deal with this pandemic, making them even more susceptible."

Axios

Oil sector is down in coronavirus crisis, but it's set to bounce back

https://www.axios.com/oil-sector-coronavirus-d804a03d-f6d1-496c-a4b4-3617b904b214.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosgenerate&stream=top

By Amy Harder

The reports of the death of the oil industry are, to quote Mark Twain, greatly exaggerated.

Driving the news: Progressive leaders are pouncing on the current collapse in the oil sector as a sign this is the beginning of its end and a turning point for the climate-change movement. Not so fast.

The big picture:

- Yes, the coronavirus is throwing the industry into its worst crisis ever, and thousands of workers and possibly hundreds of companies could go bankrupt in the coming months and years.
- But no, our society's structural foundations that run on oil have not changed — and that will become clear in the long term, after the crisis is over.

Where it stands: A lot of potential factors *could* make this moment in history the beginning of the end for the oil industry, but both history and experts suggest that absent explicit actions by governments, the long-term outlook for the oil industry is at least neutral, and even possibly positive.

Let's look first at the three factors suggesting the outlook will be positive for the industry, and then three that could change things.

The three positives:

1) Recessions put environmental concerns on back burner

"What I worry about most is history suggests when the economy is suffering, the pace of environmental policy ambition wanes," said Jason Bordoff, a former Obama administration energy official who now leads Columbia University's Center on Global Energy Policy. "It means that policies that would slow oil demand growth may get pulled back."

2) Economic growth = oil demand growth

Oil demand tracks closely with economic growth. It may not feel this way now, but history suggests the economy will *eventually* get better.

- "Most of the evidence indicates that the economic effects of the 1918 influenza pandemic were short-term," per a 2007 paper by the St. Louis Federal Reserve.
- The oil industry also recovered and undertook the fracking boom following the 2008 and 2009 recession.

This crisis moment could actually force better financial decisions overall and weed out producers less financially secure, Bordoff says. And as the economy improves and demand recovers, "strong companies might do quite well over the next decade," Bordoff said.

3) Unchanged government policies

Why don't you just stop eating if you want to lose weight?

- The ridiculousness of that question explains why the extreme dropoff in oil demand is not a successful strategy to get off oil.
- Much like a successful diet is achieved through time and gradual change to healthier foods and fewer calories, so too, is getting off oil and transitioning to cleaner sources.

"It's important to change oil demand over a period of years and decades if you want to create a sustainable reduction in emissions," said Ed Crooks, vice chairman of the Americas for consultancy Wood Mackenzie.

The three variables:

1) Coronavirus-fueled changes in society

This pandemic could change our society for the long haul. Maybe...

- We'll vacation closer to home for a long time after this.
- We'll keep Zooming into conferences.
- Flying will become prohibitively expensive after accounting for empty middle seats.
- We'll buy gasoline-powered cars because fuel is cheap and we're wary of crowded buses and subways.
- We'll buy things even more online, filling our trash bins with even more oil-derived plastic.
- Our pent-up desire to be out in the world will lead to a surge of flying and driving.

The first three would reduce oil demand, while the last three would increase it. Regardless, they're tinkering around the edges.

By the numbers: Lower oil demand from aviation, road transport and cruise ships could result in a loss of just over three million barrels a day by 2040, compared to an overall oil market of 115 million barrels of oil a day or more by then, an S&P Global Platts Analytics analysis found.

2) Economic stimulus plans

If — this is a big if — countries around the world seek to infuse their economic stimulus plans with clean-energy policies, that could go a long way in keeping the oil industry on its knees where it is now.

- Europe seems to be the most likely part of the world to double down on its already ambitious climate-change goals. But that's not where oil demand was poised to grow a lot anyway.
- China appears to be wavering on its climate-change goals, which would have the upshot of increasing fossil-fuel use of all kinds.
- Poorer and rapidly developing economies, like India and other Southeast Asian nations, are where oil demand is poised to really grow. Yet these are also countries most likely to push economic recovery any way they can get it, rather than reducing fossil fuels.

3) The presidential election

The most immediate and obvious impact of Joe Biden winning would be that he would likely infuse clean energy into any additional stimulus measures still needed by then.

- There's also a ripple effect. A Biden administration would put pressure on other nations — much like Barack Obama did — to inject climate concerns into diplomacy and economic recoveries.
- If President Trump wins reelection, we can expect little explicit focus on clean energy other than as a bargaining chip to get concessions to help the oil industry, which is often how Washington works anyway.

The bottom line: We might not be going anywhere right now, but neither is the oil industry.

Bloomberg Environment

Coronavirus Raises Concerns Over Response to Natural Disasters

<https://news.bloombergenvironment.com/environment-and-energy/coronavirus-raises-concerns-over-response-to-natural-disasters>

By Jennifer May

The Covid-19 pandemic has led emergency preparedness workers to make some changes in how they deal with disasters—like a series of violent storms that killed dozens of people in the South over the past two weeks.

Nineteen tornadoes have hit the state of Mississippi since Easter Sunday, Greg Michel, executive director of the Mississippi Emergency Management Agency, said at a briefing on Friday evening. Michel said the state was opening assistance centers in three counties for people who lost phone and internet access.

“Given the Covid pandemic, the engagement with the Red Cross and FEMA is different than we normally would have,” he said. “The face-to-face interaction is not there, so these assistance centers have been put into place to assist with that and help individuals fill out their

As if the tornadoes, hurricanes, floods, and wildfires that sweep the country every year aren’t enough to handle, now emergency management officials must factor in the coronavirus. Getting to safety is paramount, but experts worry some people might consider going to an emergency shelter so risky that they choose to ride out hurricanes, for example, in unsafe structures only to need rescue later.

First-Time Emergency

Weather-related disasters often hit back to back, such as multiple hurricanes or tornadoes following spring river flooding. But a pandemic during the spring tornado season, just as record-high ocean temperatures threaten to spawn an above-average hurricane season, is new for U.S. emergency management officials.

“This situation in particular has been very difficult to navigate because it’s the first time we’ve ever been hit with this type of emergency,” said Mike Steele, spokesman for the Louisiana Governor’s Office of Homeland Security and Emergency Preparedness.

People can be slow to accept a looming weather threat in a normal year, but this year they could need to prepare after weeks or months of having essential items delivered because of the pandemic.

“We’ve been telling people to shelter in place, stay at home, no unnecessary travel. And then we’re going to tell them to evacuate,” said Craig Fugate, who has led both Florida’s and the federal government’s emergency management agencies.

The usual number of frail seniors, people with disabilities, children or pet owners who need a public shelter won’t change because of the coronavirus, Fugate said. But they could be joined by people who spent weeks or months out of work and have no place else to go.

“A lot of people that historically have had the resources to self-evacuate may not have that because of the tremendous unemployment,” Fugate said.

Officials encourage people under evacuation orders to seek safety with friends or relatives first, then to consider hotels. Public shelters should be a last resort.

But now that Americans have absorbed months of reports about the health dangers their neighbors pose by coughing or touching hard surfaces with unclean hands, they could perceive a greater danger in shelters filled with hundred of strangers in close quarters than from a natural disaster.

“Certainly in a shelter in most cases we’re not able to maintain groups of 10 or less, so we just have to maximize the social distancing, the hygiene, and the mask discipline,” Michel said. “If someone needs access to a shelter, we’re certainly not going to deny them access because we’ve reached a group of 10.”

Managing Shelter Risks

To ease disaster survivors’ minds and to reduce health risks, people arriving at shelters managed by the American Red Cross will be screened for fevers and questioned about their travel and exposure to people with Covid-19, said Trevor Rikken, senior vice president of Disaster Cycle Services. Anyone with symptoms will be isolated, or moved to separate facilities when available.

Cots will be spaced farther apart, there will be frequent building cleanings and body temperature checks, and meals will be individually distributed. Masks, disinfectant, and thermometers have been added to standard supplies. Long-term communications about recovery assistance has shifted online.

These protocols will extend through the end of the six-month Atlantic hurricane season in late November, if not longer, according to Rikken.

“We don’t want people to be afraid to go to a shelter,” he said.

Louisiana plans to open more shelters this hurricane season to ensure social distancing.

In California, spring rains did little to dampen the prospect of a drought that raises the risk of a severe wildfire season. People fleeing from wildfires have limited escape routes through narrow canyons and multiple alerts from various agencies.

San Jose Mayor Sam Liccardo was skeptical that the Federal Emergency Management Agency’s established shelter practices would assuage evacuees’ additional health fears.

“The standard FEMA model when you have a disaster, you open up the high school gym and put everybody in there and make sure they’re well fed and cared for, doesn’t work in this pandemic,” Liccardo said recently.

Florida is evaluating alternatives to mass shelters for hurricane season, such as potentially advising more people to stay home instead of evacuating depending on when their homes were built, Jared Moskowitz, director of the state's emergency management division, said during a recent conference call for the Re-Open Florida Task Force.

Evolving Plans

Planning for the upcoming hurricane season remain ongoing at both FEMA and the Florida Division of Emergency Management, both agencies said in emailed statements.

People facing a disaster might wait longer to heed evacuation orders this year if they're working and trying to make up for financial losses because of businesses being shut down this spring, said Brian Wolshon, director of the Gulf Coast Center for Evacuation and Transportation Resilience at Louisiana State University.

Or, if people are still unemployed as a hurricane threatens, they might hit the road before evacuation orders are announced, Wolshon said.

"It could be suggested that if you're spreading out the same amount of traffic over a longer period of time, maybe the evacuation might go better? We just don't know yet," Wolshon said.

E&E

EPA punts carbon rule due to pandemic

<https://www.eenews.net/greenwire/2020/04/27/stories/1062986853>

By Jean Chernick

An Obama-era mandate that new coal-fired power plants use partial carbon capture and storage to limit emissions will stay in place a little longer because of the coronavirus pandemic.

Politico first reported that EPA in a court filing Friday blamed the pandemic for stalling efforts to repeal and replace the 2015 rule for new and modified power plant carbon emissions, which set a standard for new coal plants at a level that could only be achieved with CCS.

The Trump administration's replacement rule was already late. It was proposed in December 2018, and last year's Unified Agenda indicated EPA would finalize the package by December 2019. The filing stated that it would be final this summer, according to *Politico*.

The rule got little attention compared with EPA's revised standard for existing power plant carbon, known as the Affordable Clean Energy rule, which became final last year. That's because virtually no new coal-fired power plants are planned for construction anywhere in the country, so replacing standards for them wasn't an urgent industry priority.

The ACE rule for existing power plants, by contrast, replaced an Obama-era rule that would have accelerated the sector's shift away from coal-fired power and toward natural gas and renewables. Twenty-seven state attorneys general sued EPA in 2016 to kill the rule.

Trump's EPA was forced to leave the Obama mandate in place until the agency could replace it. That's because the section of the Clean Air Act used to regulate power plant carbon requires that new sources be regulated before existing sources for the same category can be regulated. So the Obama-era new source rule made the Trump ACE rule legally possible (*Climatewire*, Oct. 18, 2019).

While CCS is a technically demonstrated technology, industry groups held that its high cost was an insurmountable barrier that would prevent new coal-fired power plants from being built under the Obama rule.

Environmentalists vowed to fight the new rule.

Lissa Lynch, staff attorney for climate and clean energy at the Natural Resources Defense Council, called the 2018 proposal "a transparent effort to revive the coal industry by rolling back the existing standards to allow for the construction of new coal plants with decades-old technology."

"We'll continue to defend the existing standards and oppose this destructive and unnecessary rollback," she said in an email to E&E News.

Carbon capture, utilization and storage has been demonstrated at only one U.S. coal plant — Petra Nova in Texas. Congress expanded a tax break in 2018 to encourage investment in CCUS, but the technology still faces headwinds from lack of demand and competition from lower-cost technologies.

It's unclear what effect the pandemic has had on EPA's rulemaking work. The agency didn't immediately respond to a request for comment. Staff is working from home during the pandemic, but the agency has maintained that work is continuing on a slate of Trump priorities.

EPA is expected to finalize a package for oil and gas emissions in the coming weeks to replace Obama-era methane standards — another pillar of the last administration's Climate Action Plan.

"We are currently reviewing the comments received on the proposed technical amendments and proposed policy amendments and expect to finalize both rules in the upcoming months," an EPA spokesperson told E&E News last week.

Energy News Network

As EPA backs off enforcement, states and cities have little capacity to fill gap

State and local governments often have authority but lack the resources and political will to enforce pollution rules.
<https://energynews.us/2020/04/27/national/as-epa-backs-off-enforcement-states-and-cities-have-little-capacity-to-fill-gap/>

By Kari Lydersen

Since the Trump administration announced the suspension of much environmental enforcement during the coronavirus pandemic, advocates are calling on state and local regulators, as well as watchdog groups, to step up their efforts to fill the gap.

But that won't be easy, whether in a Democratic-controlled state like Illinois or a Republican one like Indiana, given the impacts of the pandemic and past staffing and budget cuts that have curbed the ability of states to carry out enforcement.

In a March 26 letter, the U.S. Environmental Protection Agency indicated that polluters won't be fined for failure to meet federal standards during the pandemic. Some experts feel the administration is using the pandemic to continue a trend of backing off on enforcement.

A report released April 20 by the Environmental Law & Policy Center shows enforcement of Clean Water Act violations in EPA Region 5 down sharply since 2017, and incidences of noncompliance are up significantly in the region, which covers Illinois, Indiana, Ohio, Michigan, Wisconsin and Minnesota.

The report says that state agencies are ill-equipped to pick up the slack from the federal government, as environmental enforcement agencies in the six states have seen reductions of more than 1,100 staff total, and almost \$150 million in annual budget cuts between 2008 and 2018.

The situation is only exacerbated by the Trump administration's recent decisions to roll back mercury limits, gut clean car standards and reject stricter standards recommended by federal researchers for particulate matter (soot). Those decisions, which the administration justified in part by the coronavirus's economic impact, enshrine policies that will outlast the pandemic.

"Capital is just seizing this moment because your local watchdogs are sheltering in place and the federal EPA has given a gift to polluters exactly when local groups are confined at home," said Rachel Havrelock, an associate English professor at the University of Illinois-Chicago who specializes in using the humanities to engage the public on environmental issues.

State powers

State agencies are in most cases deputized to carry out enforcement of federal environmental laws including the Clean Water Act and Clean Air Act, so in theory they have already been and can continue doing the enforcement work that the EPA is suspending.

But state agencies are often hamstrung by a lack of staff and resources or political will, and the idea that the federal government would make sure the laws were being enforced was an important "backstop," in the words of Al Armendariz, a regional deputy director for the Sierra Club's Beyond Coal campaign, and former EPA administrator for Region 6, based in Texas.

“This is really an awful time” for the EPA to back off, Armendariz said. “They’re just opening the door for folks who are careless or reckless, increasing the amount of pollution they are putting in the air, which could harm residents who are also dealing with the risks from coronavirus. Right now we need the strongest environmental protections to keep the public safe.”

Armendariz and others note that Trump’s rolling back of particulate matter standards is especially troubling given a recent [Harvard School of Public Health study](#) showing that people living in areas with higher particulate pollution are dying at higher rates from coronavirus.

While regulators are facing real constraints and risks in their work, environmental advocates emphasize that much enforcement can happen remotely, including following up on past violations and monitoring the emissions and operations data companies are required to submit to regulators.

“Most coal plants have electronic monitoring systems measuring pollution from stacks,” Armendariz said. “Those kinds of reports are submitted from facilities to states, often electronically. Those are the kinds of things regulators can review and take enforcement action on if appropriate, without ever physically visiting the facility.”

Concern in Indiana

Indiana Gov. Eric J. Holcomb’s executive order in response to the pandemic allows the state to “waive, suspend, or modify any existing rule” in light of the pandemic, and the [Indiana Department of Environmental Management announced](#) that it will use discretion in enforcement, including with deadline extensions and considering cases where facilities cannot comply with regulations because of the pandemic. The agency on its [website says](#) it has “not relaxed any policies nor has the agency issued any broad based waivers from meeting stringent regulatory requirements.”

But advocates fear the pandemic could mean polluters are not held accountable.

“It’s already a lax environment,” said Lindsay Haake, program director for the Citizens Action Coalition in Indiana. “Enforcement should never be viewed as a nonessential duty.”

Jesse Kharbanda, executive director of the Hoosier Environmental Council, said he believes the environmental management department is earnest about continuing to do inspections and enforce regulations, but he worries that staffing cuts or constraints during the pandemic could prevent adequate enforcement.

He said the group is also concerned that in its pandemic response announcement, the department “uses ‘encourage’ instead of ‘require’” in passages such as this one: “All regulated entities are encouraged to take all available actions necessary to ensure continued compliance with environmental regulations and permit requirements to protect the health and safety of Hoosiers and the environment.”

“While we have assurances from IDEM that they construe the desired actions as ‘requirements,’ we are concerned that the ‘encouragement’ language will cause some regulated entities to not necessarily take ‘all available actions,’” Kharbanda said. “If IDEM doesn’t set clear expectations, then some regulated entities may choose not to be so forthcoming about where they are falling short in environmental compliance.”

Kharbanda is concerned that during the pandemic, among other things, department staff may not fully enforce Indiana’s standards for outdoor wood boilers that about 8,000 households use to heat their homes. The boilers “can truly harm the respiratory health of people, and it’s precisely the type of pollution that we need to avoid in the midst of a virus that targets one’s respiratory system,” he said.

Northwest Indiana, home to multiple steel mills, power plants, an oil refinery and other heavy industry, is among the places where low-income residents already especially vulnerable to coronavirus and other ailments could suffer real-life consequences from increased pollution.

In 2012, the BP oil refinery in Northwest Indiana was forced to invest \$400 million in pollution controls and pay an \$8 million fine because of Clean Air Act violations. If such violations happened today, there might be fewer consequences, advocates fear.

Holcomb and former governors Mike Pence and Mitch Daniels (all Republicans) were known as opponents of strict government regulation, with Pence refusing to comply with the Obama-era Clean Power Plan to reduce carbon emissions. Haake said that the state has already long suffered from under-staffing at agencies like the Indiana Department of Environmental Management and the Indiana Utility Regulatory Commission.

Nonetheless, she said she has “incredible faith” in environmental department staff to hold polluters accountable, if they are given more resources and power to do their jobs. As on the federal level, she worries cuts to state enforcement capabilities will remain once the pandemic recedes.

She noted the slowing economy “will come with short-lived environmental benefits,” especially in an industry-heavy state like Indiana. “But once that production and commerce begins to ramp up again, we’ll see Hoosiers suffer the impact of already lax enforcement and oversight,” made worse by changes during the pandemic.

Department of Environmental Management spokesperson Sarah Bonick downplayed concerns, noting that the department “will generally not offer advance approval of noncompliance.”

“We still expect regulated entities to do everything they can to be in compliance,” she said. “However, we recognize that there are specific situations that may require flexibility on our part, and we will exercise discretion when necessary while continuing to protect public health and the environment.”

Signs of hope in Illinois

Illinois regulatory agencies like the Department of Natural Resources and Illinois Environmental Protection Agency have suffered deep cuts over the years, particularly under previous Gov. Bruce Rauner, a Republican, as the state has struggled with a long-standing budget crisis.

The Illinois EPA saw its staff reduced by 38% and funding decreased by 25% under Rauner, and state air pollution inspections dropped 81% in the last decade, including under Democratic Gov. Pat Quinn, [according to the Chicago Tribune](#).

Since Gov. J.B. Pritzker, a Democrat, took office last year, advocates have been hopeful about increased focus on a clean environment, though they hope the pandemic doesn't sideline progress. Illinois EPA spokesperson Kim Biggs said that in 2019, the agency posted 192 jobs and filled 123 them, and also hired 56 people so far in 2020.

"We will continue to work through the process of building our headcount in what will be a financially challenging budget cycle for states across the country," she said, noting that the [agency will](#) continue enforcement while taking safety into consideration during the pandemic.

"Since the time Gov. Pritzker took office, the IEPA has made a renewed emphasis on both hiring and enforcement," she said. "In the first year of Gov. Pritzker's administration the IEPA issued the most violation notices since 2011 and issued the most referrals since 2015."

The Illinois Department of Resources, which issues permits and does inspections related to coal mining, oil and gas, and other sectors, will continue inspections, permitting and enforcement though most staff are working remotely, according to spokesperson Rachel Torbert. "The Office of Oil and Gas Resource Management has automatically extended the time allowed permittees to abate issues noted in notices of noncompliance," she added.

Havrelock, of the University of Illinois-Chicago, authored [an op-ed](#) calling for states and localities to pass stricter regulations in light of the federal rollback, and also urged the state to tap the expertise of community organizations and universities.

"At this time any of us are ready to give to our communities and the state," Havrelock said. "So call up the academics. This is the moment to turn to Kim Wasserman, Juliana Pino" — prominent Chicago environmental justice leaders. "Bring them in to the [state] office of the environment. It may be totally unprecedented to do that, but look where we are."

Clean energy advocates in Illinois are still hopeful that Pritzker will be able to fulfill a promise made in his January State of the State address, to sign an energy bill this year that will accelerate clean energy development. Even if coal plants are facing less enforcement from the federal government, advocates reason, they are likely to scale back their operations or close as wind and solar become more and more competitive.

While Illinois's proposed Clean Energy Jobs Act doesn't include limits on sulfur dioxide, nitrogen oxide, particulate or other emissions related to public health, the legislation's mandate to phase out and ultimately end carbon emissions from power plants would inherently also stop other emissions.

Environmental Defense Fund regulatory attorney Christie Hicks said advocates see passage of the Clean Energy Jobs Act "as more important now than ever given some of these rollbacks and of course the economic stimulus that a lot of the programs [created by the proposal] would provide."

Local leadership

Some cities have the authority to enforce federal environmental laws, usually through agreements with their state environmental protection agencies. And local governments have significant power to curb pollution through public nuisance, land use and other municipal or county ordinances. Advocates say that given the federal rollbacks and state constraints, local authorities need to become more vigilant and proactive.

But many major cities have poor track records, and few extra resources to increase their enforcement.

In Chicago, an audit released last fall showed the city department of public health's abysmal failure to monitor air quality, inspect polluting facilities or issue violations, as it is authorized to do under an agreement with the Illinois EPA.

The disastrous demolition of a defunct Chicago coal plant on April 11, sending clouds of dust over a neighborhood, showcased both the failure of local officials in protecting citizens, and the powers that local governments have in such situations.

After the debacle, Mayor Lori Lightfoot lodged \$68,000 in fines against the company demolishing the plant, stopped work and launched an investigation. Local leaders, including Kim Wasserman, called for her to go much farther by revoking the company's permits, repealing a \$20 million tax break to the company and giving residents more power over development and demolition decisions. The city could have prevented the debacle in the first place if they had more closely inspected the company's plans and listened to residents' pleas not to move forward with such seemingly nonessential work during the pandemic, leaders note.

The mayor's office did not respond to a request for comment.

"There's a lot of anger at the fact this was done during a pandemic, and all these systems that have been set up are not working," said Edith Tovar, an organizer with the Little Village Environmental Justice Organization in the neighborhood where the plant was demolished.

Armendariz explained that the U.S. EPA would typically have little role in preventing or even punishing violators for such one-time situations, underscoring the important role of local governments.

Howard Learner, executive director of the Environmental Law & Policy Center, has likewise called on the city and state to better fulfill their mandates, especially given the pandemic and federal rollbacks. But he emphasized that there's no substitute for strong federal leadership and action.

"States need to step up when the federal government is stepping back from its regulatory and enforcement responsibilities, but the cities and states stepping up is no substitute for the federal U.S. EPA," Learner said.

"There's no way the states can replace what a well-funded and well-operating U.S. EPA can and should do when it comes to implementing and enforcing the core environmental laws and regulatory standards. The Trump administration is moving once again in entirely the wrong direction when it comes to protecting public health and our environment. It's especially all the more disturbing given the COVID-19 pandemic."

Inside EPA

EPA May Have To Delay SACC's Perc Review Due To Lack Of Advisors

<https://insideepa.com/daily-news/epa-may-have-delay-sacc%E2%80%99s-perc-review-due-lack-advisors>

EPA may have to postpone its advisors' planned May meeting to review its upcoming perchloroethylene (perc) evaluation, the last of the ten toxics law assessments EPA must complete by the end of June, after being forced to postpone their April meeting on its draft asbestos analysis because advisors were unavailable due to the pandemic.

"I've already informed EPA that the May meeting they're trying to hold for perc may have the same problem" as the asbestos peer review meeting, says Ken Portier, chairman of EPA's Science Advisory Committee on Chemicals (SACC), who will be departing the panel later this summer.

His comments, in an April 23 interview with *Inside EPA*, came after EPA announced April 20 that it was postponing the SACC's previously scheduled April 27-30 meeting to peer review the agency's draft evaluation of asbestos because some of the advisors are no longer available, -- a change in course just weeks after officials denied requests from environmentalists and some advisors to delay the meeting because of the pandemic.

The delay all but ensures the agency will not be able to meet its statutory deadline to complete all of the first 10 evaluations that the revised Toxic Substances Control Act (TSCA) requires by an extended June. The agency's toxics chief has already acknowledged that some of the evaluations may "slide" from the June deadline.

Now Portier, a biostatistician retired from the American Cancer Society, says that the SACC meeting EPA was planning to hold in May to peer review the agency's not-yet released draft evaluation of the common solvent perc might also need to be postponed, especially if coronavirus inspections rates spike.

"If the states open up or release their stay at home mandates too early, [at] the end of May we may be seeing the next peak in coronavirus. I'm worried the same people [who serve on the SACC and are unavailable for the asbestos meeting] will be busy" dealing with public health issues in their states in May.

Asked about the status of the planned May meeting, an EPA spokeswoman says only that the agency's April 20 statement announcing the delay of the asbestos meeting "speaks for itself."

EPA's statement did not address the May meeting. "Given the importance of the draft risk evaluation for asbestos, the Agency believes that rescheduling for a time when more members are available is critical and will allow for a more robust review of the evaluation," it states. "As a result, the SACC meeting will be rescheduled as soon as practicable."

Portier explained that panelists discussed their availability for the April meeting meant and were concerned that they may not be able to muster a quorum for the panel to meet. "Because of the coronavirus too many of them were tied up to continue with the meeting. We told EPA that and recommended they postpone the meeting," he said.

Each SACC peer review meeting includes chartered members of the SACC, as well as ad hoc panelists with expertise in the particular chemical under assessment or associated issues.

Portier explained that to hold its meetings, "SACC is required to have a majority of its chartered members at every meeting. Without being able to get a quorum, we couldn't hold a meeting. . . . It's how EPA charters its advisory committees. They all have that stipulation."

Portier clarified that while he did not ascertain exact numbers of advisors who would be unavailable to attend the planned April meeting on asbestos, there was concern that SACC would be unable to muster a quorum. "The people on this committee are exactly the sort of people working on the coronavirus," Portier explained, noting that members include medical doctors, epidemiologists, toxicologists, public health experts and occupational hygienists -- all roles tied into pandemic response.

'Not Unexpected'

"It's not unexpected," Portier said. We were "almost not able to host the [trichloroethylene (TCE) peer review meeting last March] because we could see this was happening."

At the end of the TCE peer review meeting, SACC member Henry Anderson raised concern about the timing of the scheduled asbestos peer review meeting, questioning why it was necessary given the ongoing emergency. Anderson, who retired as Wisconsin's chief medical officer, is assisting state officials and said he spent the TCE meeting running between his personal computer to monitor the TCE peer review webinar and attending pandemic response planning meetings with state officials in a secured location.

Portier recognizes that EPA officials "want to continue with this TSCA work," noting that Congress' 2016 TSCA reform law "mandated they complete these first 10 chemical [evaluations] by the end of 2019; they're already over the deadline and still have two more chemicals to do."

The reformed statute directed EPA to assess existing chemicals, those that were already in commerce when the original statute took effect in 1976 and largely grandfathered from the original statute, starting with a first batch of 10. The statute provided a December 2019 deadline to finalize these assessments, while also allowing a 6-month extended deadline. EPA is now racing to meet that June deadline for its first 10 assessments, though it has not finalized any of them.

EPA has yet to release its draft evaluation of perc for public comment and peer review, and it is now unclear when SACC might peer review the asbestos or perc drafts.

Portier says that some of the delay in completing the first 10 evaluations came from the delay caused by the federal shutdown in December 2018, which he said “put the committee six months behind. We didn’t get started until June [2019]; it’s not possible to get through 10 [draft evaluations] at the level we’ve been looking at these first 10 risk assessments.”

Portier added that both committee members and agency staff have been on a “learning curve” to understand what TSCA requires, what EPA is doing and why, and for agency staff to understand “the level of report that the committee is coming to expect. This first 10 [evaluations have been] part of a growth process on both sides. It has really meant a lot of work for the chartered committee. It has been a struggle to get these” reviews done.

Few of the committee members are retired, meaning most are juggling committee work on top of their jobs and other commitments. EPA’s pace in recent months has been impressive, releasing a draft evaluation once a month since December. EPA has given SACC about 30 days to review most of the evaluations it before hosting the peer review meeting, despite SACC members’ protests.

Once the peer review meeting is complete, the panel has 60 days to finalize its report to the agency, meaning that in recent months, SACC members have been reviewing two draft evaluations simultaneously.

EPA, however, has yet to finalize any of the evaluations -- a point Anderson raised in his remarks at the TCE meeting. He suggested EPA complete some of the evaluations instead of preparing for peer review of the draft asbestos evaluation in April.

SACC’s Role

Without completed evaluations, it is unclear how -- or whether -- EPA will respond to the concerns the SACC has raised in its reports on the agency’s draft evaluations.

During a recent SACC meeting, EPA’s toxics chief Alex Dunn sought to assure the panel that the agency “is listening” to its concerns, citing recent decisions to mandate additional testing of PV29 -- the first draft evaluation it reviewed, though some panelists continued to raise concerns that the agency appears to have ignored many of their other concerns.

Dunn also called for the panelists to encourage colleagues to step up and serve on the panel as the agency prepares to name replacements for a host of departing SACC members.

Portier noted that under SACC's charter, one-third of its members will rotate off the committee in July, including him. "By July, they have to find a new chair," Portier said.

The next panelists will be critical as Dunn has said at several public meetings that EPA intends to shift SACC's role after the first 10 draft evaluations are peer reviewed, and last February, sought SACC's input.

How the panel is overhauled will be significant, as the agency is beginning to evaluate 20 more existing chemicals.

EPA in recent weeks has released its draft scoping documents for its next 20 chemicals, which it is due to finalize in June. Dunn acknowledged at SACC's February meeting to review the draft evaluation of carbon tetrachloride that it would not be possible for SACC to peer review 20 chemicals as it has the first 10 and reiterated her plans to rethink how EPA will undertake peer review of its draft evaluations.

Portier said that SACC's transition is his next project, now that the asbestos meeting has been delayed. "We've started having some limited conversations on how the EPA may" want to do that he said, adding that "one of my tasks next week [will be to] put some of those ideas down on paper so we can get moving on that."

Portier said that EPA and SACC are also learning what expertise is needed on the SACC. "The first time you create this committee you take a guess, and it was a very good guess," Portier said. He said that in retrospect, "it would be nice to have more developmental toxicology people. We haven't really come across a chemical yet that's a significant endocrine disruptor; we don't have that expertise yet." He noted, however, that he raised the issue because half-a-dozen phthalates are among the next 20 chemicals up for evaluation.

Other issues that he sees SACC needing to address include the reformed TSCA's requirement that the agency's evaluations address "potentially susceptible subpopulations (PESS)," groups of people thought to be more susceptible to exposure to the chemical under evaluation because of their lifestyle, enhanced exposure or health status, among other factors.

"I still think that . . . we've yet to get a good handle on the [PESS], and to me that's one of those issues that I've been thinking we need a special consultation on that." Portier suggested that SACC members "who understand this [should] spend a couple of days discussing how PESS should be handled in TSCA risk assessments."

Portier acknowledged that some SACC members have also called for someone from OSHA to provide the committee with information on personal protective equipment (PPE) and the hierarchy of controls of different kinds that are used to protect workers on the job. EPA's use of the PPE in its analyses has been an area of controversy and frequent SACC comment in its peer review reports.

"We've been butting our heads over it, but I don't think we've got to the end of that," Portier said of the PPE issue. -- Maria Hegstad(mhegstad@iwpnews.com)

Politico's Morning Energy

EPA SAYS VIRUS DELAYING CARBON RULE REVISIONS

<https://subscriber.politicopro.com/newsletter/2020/04/oil-sector-skeptical-of-trump-plans-787148>

AROUND THE AGENCIES

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EPA SAYS VIRUS DELAYING CARBON RULE REVISIONS: The coronavirus pandemic has delayed EPA's plans to ease carbon emissions limits for newly built power plants, the agency revealed in a Friday court filing. EPA in 2018 proposed raising the limit for any coal plants that may be built in the future (Reg. 2060-AT56), eliminating an Obama-era requirement for partial carbon capture and storage for such projects, though the change isn't expected to prompt utilities to build new coal capacity. "Due to delays related to the COVID-19 pandemic, EPA now expects to send the package to OMB in early summer of 2020," the agency wrote. "EPA's intention and expectation is that the Agency will be in a position to take final action on this proposed rule in the summer of 2020."

FORMER FERC OFFICIALS DEFEND OBAMA CARBON RULE: Eight former FERC commissioners and chairmen on Friday used a court brief to push back on EPA's repeal of the Clean Power Plan, particularly a claim by the Trump administration that the Obama rule trampled on FERC's jurisdiction. The Federal Power Act "does not give the Commission a license to block other agencies from using their own authorities simply because their regulations may affect wholesale rates," they wrote in a "friend of the court" brief. EPA enjoys "expansive authority to regulate power sector air emissions."

The commissioners also argued that the Obama rule's fuel-switching mechanism leaned on established market trends that have held up in the real world. "The passage of time has demonstrated that the rule's emission guidelines were based on reasonable, albeit conservative, projections of the potential for generation shifting to achieve cost-effective air pollution reductions." Signatories include Charles B. Curtis, an independent who was FERC's first chairman when it was created in 1977; Republican Commissioner Nora Mead Brownell; and six Democrats, including recent members like Norman Bay and Colette Honorable.

DEMOCRATS ALSO GOT IN ON THE ACTION, with 68 House members and six senators joining a brief arguing that the Obama power plant rule "was a lawful exercise of the authority" granted by the Clean Air Act. "EPA's decision to reduce emissions in a way that is cost-effective and responsive to realities on the ground is exactly what Congress intended for EPA to do when it gave EPA flexibility to deal with an expansive array of pollutants," they wrote. Expect to hear the opposite from congressional Republicans when pro-administration briefs are due in late June.

MOVERS AND SHAKERS

— Garrett Kral has started at EPA as a special adviser for oversight in the Office of Congressional and Intergovernmental Relations, according to his LinkedIn profile. Previously he was counsel for House Natural Resources Committee Republicans.

Enforcement

E&E

EPA to let N.C. waive civil penalties for NOx violations

<https://www.eenews.net/greenwire/2020/04/27/stories/1062986837>

By [Sean Reilly](#)

With the backing of some of the nation's biggest power producers, EPA is locking in approval of a North Carolina plan allowing the state to continue to waive civil penalties for permit violations of smog-forming pollutants stemming from plant startups, shutdowns and equipment malfunctions.

The plan applies to excess emissions of nitrogen oxides from large internal combustion engines, according to a [final rule](#) set for publication in tomorrow's *Federal Register*.

Nitrogen oxides react with volatile organic compounds in sunlight to form ozone, a lung irritant that is the main ingredient in smog. In the rule, Mary Walker, head of EPA's Atlanta-based Region 4 office, acknowledged that her decision to grant approval deviates from national policy. But she pointed to the fact that North Carolina currently meets National Ambient Air Quality Standards for ozone and other common pollutants as evidence that the exemptions don't interfere with efforts to comply with those limits.

As E&E News reported earlier this month, North Carolina is the second state to win a reprieve from a 2015 Obama-era rule that broadly barred the use of "affirmative defense" provisions to shield polluters from civil penalties because of violations related to startups, shutdowns and malfunctions ([Greenwire](#), April 8).

Arguing for EPA approval of the state's plan were Atlanta-based Southern Co.; Duke Energy Corp., headquartered in Charlotte, N.C.; and the Tennessee Valley Authority, according to comments filed last year on the agency's preliminary signoff on the state's application. All three power producers have plants in North Carolina or nearby states.

"Excess emissions are unavoidable," Duke Energy attorneys wrote, for example, in a submittal that called the state's approach reasonable. "Not all numerical emissions limitations are technically achievable during all phases of a unit's operation," they said.

Opposed was the Environmental Protection Network, a group made up mostly of former EPA employees critical of Trump administration policies. The exemption would "sanction emissions of potentially substantial amounts of unhealthy air pollution," the group wrote in its comments. Because those amounts can't be known in advance, there is no assurance that national air quality standards "will continue to be met," according to the comments.

Earlier this year, EPA approved Texas' bid for a waiver, a decision that environmental groups are now challenging in federal court ([Greenwire](#), Feb. 11).

Texas and North Carolina are among the states that are plaintiffs in litigation challenging the Obama-era policy before the U.S. Court of Appeals for the District of Columbia Circuit. Proceedings in that litigation have been on hold for three years after Trump administration officials said they needed time to consider their position.

In a filing last week on jurisdictional issues, lawyers for the Sierra Club and other environmental groups accused EPA of attempting to chip away at the Obama-era policy on a state-by-state basis while claiming it is still under review.

In an online posting to answer questions about its North Carolina decision, EPA said Walker got agreement last month from agency headquarters "to finalize an action that is inconsistent with national policy." The resulting "alternative interpretation" does not apply to any other state in Region 4, the posting says.

Personnel

E&E

Ex-Hill staffer joins EPA as special adviser

<https://www.eenews.net/greenwire/2020/04/27/stories/1062986879>

By Kelsey Brugger

A former Republican congressional staffer has jumped to EPA to become a special adviser in the Office of Congressional and Intergovernmental Relations.

Garrett Kral, who served for nine months as counsel on the House Natural Resources Committee, has a new job in the administration.

"Garrett was a fantastic staffer while with the Resources committee," said committee spokesman Austin Hacker. "He will be a valuable addition to their team."

EPA confirmed his new post.

In 2019, Kral obtained a law degree from the University of Maryland Francis King Carey School of Law, where he concentrated on environmental law, according to the college's website. While in school, he was a legal fellow at the Senate Environment and Public Works Committee.

He also has a master's degree in public policy from George Mason University. He went to undergrad at the University of West Florida, where he studied environmental science and policy. He was president of his school's surf club and was a competitive surfer.

While in law school, Kral contributed to a piece published by the American Bar Association titled "Global Trends in Protection of Migratory Birds," which looked at the success of international migratory bird protections as well as the deterioration of global environmental conditions.

PFAS

E&E

Senate committee looks to revive bipartisan PFAS compromise

<https://www.eenews.net/eedaily/stories/1062979615/search?keyword=EPA>

By Ariana Figueroa

Senate Environment and Public Works Committee leaders are looking to attach toxic chemical provisions that failed last year to draft drinking water legislation.

Draft legislation released last week says the committee is looking to incorporate drinking water standards for two types of per- and polyfluoroalkyl substances (PFAS) within two years.

The EPW Committee and the full Senate approved the language last year in its National Defense Authorization Act, but it failed to become law because of disagreements with the House ([E&E Daily](#), Dec. 9, 2019).

The two types of PFAS in question are perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). Studies have linked the chemicals to multiple health problems such as cholesterol issues and some cancers.

EPA announced in February it was starting the process for regulating the two substances, but lawmakers and advocates fear the agency could take years to complete a final rule ([Greenwire](#), Feb. 21).

"The Committee continues to review the PFAS language that passed both the Committee and the full Senate in 2019 but failed to be enacted into law for inclusion in a managers' amendment to the bill when the bill is considered," [says](#) the draft "Drinking Water Infrastructure Act of 2020."

"The Senate overwhelmingly supports the final drinking water language," a Democratic committee aide said.

The bill also includes \$300 million per fiscal year through 2024 to address cleanup of contaminants, particularly PFAS.

As for concerns about a repeat scenario where the House strikes the drinking water provisions, calling them too weak, the aide said the overwhelming consensus is to have some federal standard rather than no standard at all.

"The debate last time centered around whether the standard EPA set would be as strong as some people wanted it to be," the Democratic EPW aide said. "In the meantime, let's not hold up the PFOA and PFOS standard."

House lawmakers are also looking to add their own PFAS provisions in upcoming infrastructure bills in an attempt to restrict industrial discharge of the chemicals ([E&E Daily](#), April 20).

Rep. Chris Pappas (D-N.H.) is hoping to add a PFAS provision that would amend the Clean Water Act by requiring EPA to add the chemicals to the Effluent Guidelines Program.

Under the program, water pollution from industrial and commercial facilities are regulated and have to meet pre-water-treatment standards set by the agency.

If PFAS is added to that program, those industrial facilities would have to remove the chemicals from water that is discharged in waterways, lifting the cleanup burden from utilities.

Lawmakers are also looking to the upcoming debate on the defense authorization to add more PFAS provisions (*E&E Daily*, April 6).

Water

Bloomberg Environment

Chesapeake Bay Foundation Fires Shot Against Trump Water Rule

<https://news.bloombergenvironment.com/environment-and-energy/chesapeake-bay-foundation-fires-shot-against-trump-water-rule>

By Amena Saiyid

The Chesapeake Bay Foundation Inc. and ShoreRivers Inc. sued the Trump administration Monday for removing federal protections for certain wetlands and seasonal streams in the Mid-Atlantic region.

The advocacy groups are one of the first challenging decisions by the Environmental Protection Agency and the U.S. Army Corps of Engineers to repeal and replace a 2015 Obama-era rule defining the waters of the U.S., or WOTUS, with the Navigable Water Protection Rule ([RIN: 2040-AF75](#)), published April 21.

The Trump administration replaced the Obama-era definition of what constitutes federally protected waters by first repealing it with 1986 regulations, and then replacing it with the regulation that was published six days ago. The groups filed a separate complaint against the repeal, and the replacement.

The new definition “ignores the scientific underpinnings of the 2015 Clean Water Rule and jettisons vital protections for wetlands and streams across the [Chesapeake] Bay’s 64,000 square-mile watershed,” according to the complaints, filed in the U.S. District Court for the District of Maryland.

“The Final Rule strips coverage from key waterbodies and wetlands that watershed science has demonstrated to have a significant nexus to downstream waters—and that when degraded, impacts the overall health of the waterbodies they connect to,” the groups wrote in their primary [complaint](#) against the replacement rule.

The groups said the 2020 regulation is the Trump administration’s “most recent and egregious attempt to strip water quality protections for waters in the United States, which narrows the scope of the Clean Water Act in a manner that is irreconcilable with the intent and plain meaning of the statute.”

‘Complete About-Face’

They noted that the Administrative Procedure Act requires agencies to articulate a reasonable explanation for their deregulatory actions. They said the Obama administration formulated the [2015 Clean Water Rule](#) (RIN: 2040-AF30) on a well-developed record, with extensive scientific evidence and public support.

“Now the Agencies have made a complete about-face without reckoning with the rulemaking record of the Clean Water Rule that would in any way support repealing the Rule,” the groups wrote in their complaint against repealing the 2015 rule.

The Chesapeake Bay receives half of its water from an intricate network of hundreds of thousands of creeks, headwater streams, and rivers, and about 1.5 million acres of wetlands, many of which are non-navigable tributaries, non-tidal wetlands, and ephemeral and intermittent streams that the 2020 rule will no longer protect.

“The Chesapeake Bay is a waterbody that will not be restored if its wetlands and tributaries are not protected under the Clean Water Act,” the complaint against the repeal rule said.

The new water rule, which defines the reach of Clean Water Act protections, will do most damage in Delaware, the District of Columbia, and West Virginia—three places that rely entirely on the Clean Water Act to protect their local waters, the advocacy groups allege.

In Delaware alone, it would allow the destruction of nearly 200,000 acres of wetlands, and Pennsylvania could lose protections for its seasonal streams, the groups say in the complaint. Moreover, thousands of Delmarva Bays—wetlands unique to the Delmarva Peninsula—are directly at risk as well, they say.

The foundation is a nonprofit group that advocates for the restoration and protection of the Chesapeake Bay. ShoreRivers is a nonprofit advocacy group for Maryland’s Eastern Shore.

Cause of Action: Violation of the Administrative Procedure Act for issuing the 2020 rule that is: inconsistent with the Clean Water Act; based on predetermined decision to repeal the 2015 Clean Water Rule, and lacks a reasoned explanation for that repeal.

Relief: Vacate the 2020 Navigable Waters Protection Rule.

Response: The EPA and the Army Corps said they don’t comment on pending litigation.

Attorneys: Brittany Ellen Wright and Jon Mueller with the Chesapeake Bay Foundation are representing the foundation and ShoreRivers.

The cases are: Chesapeake Bay Foundation v. Wheeler, D. Md., No. 20-01063, 4/27/20, Chesapeake Bay Foundation v. Wheeler, D. Md., No. 20-01064, 4/27/20.

Bloomberg Environment

Lawyers See Maui Opinion as Grounds to Challenge Trump Water Rule

<https://news.bloombergenvironment.com/environment-and-energy/lawyers-see-maui-opinion-as-grounds-to-challenge-trump-water-rule>

By Amena Saiyid

The Supreme Court's lack of deference to the EPA's view of Clean Water Act protections could be fodder for upcoming challenges to the Trump administration's new water jurisdiction rule, attorneys say.

The Supreme Court in *Cty. of Maui v. Hawai'i Wildlife Fund* last week rejected the Environmental Protection Agency's narrow reading of the Clean Water Act.

The EPA has maintained that Clean Water Act permits are only required for discharges from a pipe or other conduit into federally protected waters. But in a 6-3 opinion, the court said the law requires a permit for any "functional equivalent of a direct discharge" into a wetland, stream, river, or major waterway.

The *Maui* ruling came two days after the EPA and the Army Corps of Engineers published the Navigable Waters Protection Rule, which includes a narrowly defined reading of what waters and wetlands Congress intended to protect from pollution under the Clean Water Act.

The *Maui* case doesn't address the scope of "navigable waters." Rather, it deals with what discharges into navigable waters are regulated.

But *Maui* "could indirectly affect litigation over the Navigable Waters Protection Rule because it could signal that the Supreme Court is less likely to defer to EPA's interpretation of the Clean Water Act," said Neal McAliley, an environmental attorney with the Miami office of Carlton Fields P.A.

Groundwater as Connection?

Under the new rule, the Trump administration removed Clean Water Act protections from isolated wetlands that are connected to surface waters via groundwater, contending "if groundwater is not jurisdictional, it also makes practical sense that surface water features connected only via groundwater likewise are not jurisdictional."

But attorneys say the *Maui* decision has weakened the government's defense.

"If groundwater can be the connection to permitting in *Maui*, then why can't groundwater be the connection for extending jurisdiction over isolated wetlands and seasonal waters?" said Steven Miano, an environmental attorney with Hangley Aronchick Segal Pudlin & Schiller.

The *Maui* ruling sent a clear message to the Trump administration, Miano said: "Don't go too far in cutting Clean Water Act protections."

And Sarah Peterman Bell, an environmental attorney with Farella Braun + Martel, said the *Maui* holding will be used as "confirmation that the courts have conclusively determined that there are situations where the Clean Water Act applies to discharges to groundwater."

***Rapanos* Revisited**

The *Maui* decision rejected the industry-preferred approach, which would have exempted all indirect pollution from Clean Water Act permitting requirements.

Justice Stephen Breyer, who authored the majority opinion, was joined by the court's more liberal members as well as Chief Justice John Roberts and Justice Brett Kavanaugh.

However, Kavanaugh made it known in a separate concurring opinion that his reading of the Clean Water Act comports with the late Justice Antonin Scalia's plurality opinion in *Rapanos v. United States*.

It's Scalia's opinion that President Donald Trump in February 2017 ordered the EPA and the Army Corps to consider when replacing and rewriting the Obama-era waters of the U.S. (WOTUS) rule. Trump's order didn't address Justice Anthony Kennedy's concurring opinion, which the Obama administration's water rule heavily relied on.

The new Trump administration rule echoes Scalia in asserting jurisdiction over "relatively permanent, standing, or continuously flowing bodies of water" and not isolated wetlands and streams where the water flow is sporadic.

A former EPA Region 10 counsel, Mark Ryan of Ryan & Kuehler PLLC, said Kavanaugh is "telegraphing where he would vote if WOTUS ever makes it back to the Supreme Court."

Challengers to the recent waters rule rewrite are likely to use "opinions from the two conservative justices to reaffirm protections for waters of the United States," said Larry Liebesman, a former Justice Department environmental lawyer now at the environmental and water permitting firm of Dawson & Associates.

Attorneys for the Southern Environmental Law Center and Earthjustice, which were involved in Maui and related litigation, declined to discuss the impacts of the Maui ruling on the new Trump water rule.

Bloomberg Environment

Wichita to Get \$280 Million Loan for New Water Treatment Plant

<https://news.bloombergenvironment.com/environment-and-energy/wichita-to-get-280-million-loan-for-new-water-treatment-plant>

By Adam Allington

Wichita, Kan. will receive a \$280 million federal loan to help replace its drinking water treatment plant, adding to a growing number of cities borrowing money for water infrastructure improvements.

The loan, which the Environmental Protection Agency announced Monday, will be funded by the Water Infrastructure Finance and Innovation Act (WIFIA). Wichita is the first municipality in Kansas and the fourth borrower in the Midwest to receive a WIFIA loan.

The federal loan is expected to cover 49% of the project costs for a new water treatment plant in Northwest Wichita, an EPA news release said.

The new plant will replace the existing 80-year old treatment facility, which city officials told Bloomberg Law has long outlived its useful life. The project will create about 1,800 jobs, both in construction and operations, the agency said.

It will be able to treat up to 120 million gallons of water daily for 500,000 residents, as well as industrial and wholesale customers, the EPA said.

The total cost will be about \$570 million. The Kansas Drinking Water State Revolving Fund will finance approximately \$270 million, according to EPA. The WIFIA loan will save Wichita about \$97 million compared to typical bond financing, the EPA said.

The EPA has now issued 18 WIFIA loans totaling \$4 billion to help finance \$9 billion for water infrastructure projects, EPA Administrator Andrew Wheeler said in a news release. The projects translate into 18,000 jobs, he said.

St. Louis, San Diego, Miami and Omaha, Neb. are among the other cities cities that have received WIFIA loans, the EPA said.

E&E

Ranchers fire early shots in legal fight over WOTUS rewrite

<https://www.eenews.net/greenwire/2020/04/27/stories/1062986935>

By Jeremy P. Jacobs

Property rights advocates today filed one of the first lawsuits challenging the Trump administration's Clean Water Act rule, arguing that the regulation does not go far enough in limiting the law's reach.

EPA and the Army Corps of Engineers last week finalized the Navigable Waters Protection Rule, opening the door for what is expected to be dozens of lawsuits. Most challenges are expected to come from environmental groups and blue states arguing that the rule improperly guts much of the law.

The rule defines what wetlands and streams require permitting under the Clean Water Act. The Trump rule significantly limits that scope from an Obama-era definition of waters of the U.S., or WOTUS, removing protections for a majority of the country's wetlands and 18% of its streams (Greenwire, April 21).

But today's filing from the New Mexico Cattle Growers' Association, represented by the conservative Sacramento, Calif.-based Pacific Legal Foundation, says the rule still extends too broadly to the country's waterways.

It calls on the U.S. District Court for the District of New Mexico to immediately block the rule from going into effect, at least in the Land of Enchantment.

The Trump administration sought to provide more clarity by providing four categories of what waters qualify for protections, including traditionally navigable waters used for commerce, perennial rivers and tributaries, lakes, and ponds and their adjacent wetlands.

The filing from the cattle group is an update to earlier litigation challenging the Trump rule's predecessor. It takes aim at every category in the new regulation.

For example, "a tributary would be regulated under the Rule even if it had as little as a garden hose worth of flow throughout the year," the group argued in its lawsuit.

And as an overarching principle, the challenge seeks to limit the Clean Water Act's reach to waterways used for the transportation of goods in commerce.

If adopted by courts, the arguments in the motion would significantly reshape the Clean Water Act. No wetlands, for example, would be covered unless they are essentially inseparable from regulated tributaries.

E&E

Democrats promise muscular response to Trump WOTUS rule

<https://www.eenews.net/eedaily/stories/1062979621/search?keyword=EPA>

By Jeremy P. Jacobs

Democrats are vowing to take action to block the Trump administration's new rule defining what wetlands and streams qualify for Clean Water Act protections.

EPA last week finalized the Navigable Waters Protection Rule, starting a 60-day clock before it goes into effect.

The rule is a significant departure from the Obama administration's previous Waters of the U.S., or WOTUS, rule.

It would narrow the Clean Water Act's reach, removing protections for a majority of the country's wetlands and 18% of its streams (Greenwire, April 21).

House Transportation and Infrastructure Chairman Peter DeFazio blasted the decision to issue the rule during the novel coronavirus pandemic.

"The Trump administration's move to roll back clean water protections, while the country is in the middle of a public health crisis and where access to clean water is critical to saving lives, is cruel and wrong," the Oregon Democrat said.

A Congressional Review Act challenge is unlikely to survive with President Trump at the White House and Republicans controlling the Senate.

But, like with other Trump rules, opponents will focus on supporting legal challenges and conducting Hill scrutiny, waiting to see what the elections bring.

"I urge all of my colleagues in Congress to join me in supporting congressional action to prevent Trump's Dirty Water Rule — the most significant rollback of Clean Water Act standards in history — from taking effect," DeFazio said.

T&I Subcommittee on Water Resources and Environment Chairwoman Grace Napolitano (D-Calif.) called the finalization of the rule "unconscionable."

EPA has said the rule intends to provide clarity to landowners about what waterways qualify for the laws' regulatory regime — and which do not.

WOTUS rules have been some of the most litigated rules in EPA history. EPA claims the current rule is limited to the authority granted by Congress and what has held up in courts.

Critics, however, have criticized that logic, particularly EPA's reliance on the late Supreme Court Justice Antonin Scalia's opinion in the muddled 2006 *Rapanos* decision, which only gained four votes on the court — not a majority.

Republicans on Capitol Hill have cheered the rule. Trump "has kept his commitment to farmers, small business owners, and communities in North Missouri and across the country by replacing the excessive and burdensome Obama-era Waters of the United States rule," said T&I ranking member Sam Graves (R-Mo.)

He added that the pandemic highlights the need for the rule. "The new Navigable Waters Protection Rule respects the rights of states and individuals, and it couldn't come at a better time," said Graves.

"While state and local governments and businesses across the country struggle from the economic fallout from the COVID-19 pandemic, what we need is more certainty and less burdensome regulations from Washington," he said.

It is unclear what actions congressional critics of the rule will take and when. In the Senate, Environment and Public Works Committee ranking member Tom Carper (D-Del.) highlighted a recent commentary from EPA's own Science Advisory Board that called into question the science underlying the rule.

EPA has said the rule is bound by congressional and legal authorities, which the board was not when analyzing it ([*Greenwire*](#), March 6).

"This is how the Trump Administration is responding 'all hands on deck' to the COVID-19 pandemic — by allowing industries to pollute freely and with impunity, heaping more cleanup costs on vulnerable communities," Carper said. "More pollution, worse public health outcomes and higher bills are far from what Americans need."

The Hill

Supreme Court decision will still allow for water pollution, but possibly less

<https://thehill.com/policy/energy-environment/494595-supreme-court-decision-will-still-allow-for-water-pollution-but>

By [Rachel Frazin](#)

Thursday's Supreme Court ruling on the Clean Water Act will require permits and limits for polluters, but will ultimately still allow them to discharge pollution into streams that are connected to major U.S. waterways.

The high court, in a 6-3 decision, [struck down the Environmental Protection Agency's 2019 interpretation of the Clean Water Act](#), which aimed to exclude pollution that moves through groundwater from the legislation's permitting requirements.

"We conclude that [a permit is required] if the addition of the pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters," the majority opinion stated.

Water quality advocates say, however, that those permits can be easy to come by, so the ruling won't necessarily prevent facilities from polluting entirely, though it will require them to comply with limits established in the permits.

"It is possible that the same facilities that might have otherwise presumed themselves to be exempt, will be able to discharge and will get permits to do so, but in that process, will have pollution limits on what they're discharging, and that's a very significant improvement," said Jon Devine, the director of federal water policy at the Natural Resources Defense Council.

He said that under the interpretation that was struck down, there was a loophole that would allow facilities to "determine for themselves" whether they needed to seek a permit.

An EPA official told The Hill in an email that the agency was "reviewing the decision and the Court's call for the Agency to provide further guidance."

"In holding that the Clean Water Act requires a permit for the addition of pollutants to groundwater if it is the "functional equivalent" of a direct discharge, the Court unfortunately leaves some uncertainty for the public, including private property owners," the person said.

The decision also comes on the heels of the finalization of a separate Trump administration rule called the Navigable Waters Protection Rule, which removes [protections for smaller bodies of water](#) that environmentalists say should be protected to stop pollution from reaching larger water sources.

Earthjustice attorney David Henkin, who argued the Supreme Court case, said that the new decision is interrelated with the navigable waters rule because the court's decision means that facilities need a permit to discharge mobile pollution into some smaller bodies of water.

“It’s a bad thing,” Henkin said of the Navigable Waters Protection Rule. “Yesterday’s Supreme Court decision made that bad thing a little bit less bad because polluters will not be able to stick their pipes into them and put mobile pollutants into them.”

Proponents have defended the navigable waters rule, saying that a previous Obama administration rule it replaced was too far-reaching.

The Supreme Court ruling came after environmental groups in Hawaii sued Maui County over a municipal water treatment plant that was pouring wastewater into wells, where it combined with groundwater. A study had also found that some of the wastewater had surfaced near beaches.

The Hill

Ranchers sue Trump administration, arguing water rollback is federal overreach

<https://thehill.com/policy/energy-environment/494886-ranchers-sue-trump-administration-arguing-water-rollback-is-federal>

By Rebecca Beltsch

A group of ranchers sued the Trump administration Monday over a rollback to an Obama-era water rule they argue is still too strict.

At stake is the Navigable Waters Protection Rule, a rule President Trump repeatedly promised to deliver for farmers who complained previous policy left huge swatches of their land subject to federal oversight.

But the suit from the New Mexico Cattlemen’s Association argues the latest Trump replacement is both too strict, violating “the Constitution, the Clean Water Act, and Supreme Court precedent,” and lacks key definitions.

“The act does not define ‘navigable,’” they argued, leaving it unclear whether it falls to the Environmental Protection Agency (EPA), the Army Corps of Engineers or the state to regulate various water bodies.

But they said the rule “provides no guidance or criteria to the agencies” to sort out who will oversee what.

Environmental groups, who have likewise pledged to sue over the rule, see it differently.

“This is not just undoing the clean water rule promulgated by the Obama administration. This is going back to the lowest level of protection we’ve seen in the last 50 years,” Collin O’Mara, president and CEO of the National Wildlife Federation, said when the rule was announced in January. “This is a staggering rollback.”

President Obama’s Waters of the U.S. rule was also heavily litigated, particularly by farmers who said it was too far reaching.

Repealing that water rule was a campaign promise of Trump's.

“As long as I’m president, government will never micromanage America’s farmers,” he told the audience at the American Farm Bureau Federation annual meeting just days before his replacement rule was announced.

EPA said it would not comment on the pending litigation.

The challenges to the Navigable Waters Protection Rule is likely to once again put the Trump administration between environmentalists and those who were hoping for laxer regulation.

Suits filed last week against the Affordable Clean Energy rule, which weakens power plant regulations, has spurred suits from green groups as well as coal companies who argued the EPA should not have issued the new regulation at all.